

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE
BECHEN, ELVIRA BUMPUS,
RONALD BIENDSEIL, LESLIE W.
DAVIS, III, BRETT ECKSTEIN,
GLORIA ROGERS, RICHARD
KRESBACH, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON,
JEANNE SANCHEZ-BELL, CECELIA
SCHLIEPP, TRAVIS THYSSEN,
CINDY
BARBERA, RON BOONE, VERA
BOONE, EVANJELINA CLEERMAN,
SHEILA COCHRAN, MAXINE
HOUGH, CLARENCE JOHNSON,
RICHARD LANGE, and GLADYS
MANZANET,

Plaintiffs,

Case No. 11-CV-00562
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE and
RONALD KIND,

Intervenor-Plaintiffs,

Members of the Wisconsin Government
Accountability Board, each only in his
official capacity: MICHAEL
BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY,
Director and General Counsel for the
Wisconsin Government Accountability
Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,
THOMAS E. PETRI, PAUL D. RYAN,
JR., REID J. RIBBLE, and SEAN P.
DUFFY.

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in his
official capacity: MICHAEL
BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, TIMOTHY
VOCKE, and KEVIN KENNEDY,
Director and General Counsel for the
Wisconsin Government Accountability
Board,

Defendants.

DECLARATION OF DANIEL KELLY IN SUPPORT OF THE DEFENDANTS'
RESPONSE TO PLAINTIFFS' MOTION TO EXTEND TIME IN WHICH TO
MOVE TO COMPEL PRODUCTION OF DOCUMENTS AND TESTIMONY

I, Daniel Kelly, under the penalty of perjury under the laws of the United
States of America, declare and state as follows:

1. I am one of the attorneys for the defendants, Michael Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, Timothy Vocke, and Kevin Kennedy (the “Government Accountability Board”).

2. Last week (on December 22), plaintiffs’ counsel requested an extension of time to file discovery motions.

3. All parties immediately agreed to the requested extension.

4. Mr. Poland proposed a stipulation to memorialize the parties’ agreement. Attached as Exhibit 2001 is a true copy of an email from Mr. Doug Poland attaching his proposed stipulation.

5. The Government Accountability Board circulated a revised stipulation that simply stated that all parties had agreed to the requested extension. Attached as Exhibit 2002 is a true copy of my 11:28 a.m., December 23, 2011, email to Doug Poland (and others) attaching the revised stipulation.

6. Plaintiffs’ counsel rejected the Government Accountability Board’s proposed stipulation.

7. The Government Accountability Board circulated another draft that left most of plaintiffs’ original language, and merely corrected some of their mischaracterizations. Attached as Exhibit 2003 is a true copy of my 5:53 p.m., December 23, 2011, email to Doug Poland (and others) attaching a second revised stipulation.

8. Plaintiffs' counsel never explained why neither of the drafts was acceptable, or why it was necessary for the Government Accountability Board to stipulate to their argument or (inaccurate) version of events.

9. None of the deposition subpoenas issued in this case so far have required defendants to produce any records, so in the absence of any duty to produce it is impossible for the defendants to have "withheld" any documents.

10. Although the Legislature instructed witnesses not to provide certain testimony relating to events leading up to and including the Legislature's adoption of Acts 43 & 44, the defendants raised no such objections.

11. The defendants raised no "privilege" objections at any deposition other than that of Mr. Joe Handrick.

12. Reinhart Boerner Van Deuren s.c. ("Reinhart") was retained on November 22, 2011, to assist the Attorney General in representing the Government Accountability Board.

13. Mr. Handrick is a Reinhart employee who is assisting the attorneys defending this case.

14. Although Mr. Handrick previously provided consulting services to the Legislature through its attorneys (Michael Best & Friedrich), Mr. Handrick has provided no such services since at least November 22, 2011.

15. Since November 22, 2011, Mr. Handrick's responsibilities, as they relate to redistricting, have been solely to assist the attorneys representing the Government Accountability Board in this case.

16. Plaintiffs' counsel never gave any explanation for his repeated and improper attempts, at the deposition of Mr. Joe Handrick, to obtain information protected by the Government Accountability Board's attorney-client privilege or its attorneys' work product.

17. Plaintiffs' counsel never explained why he seems to believe it proper to muddle the independent roles of the Legislature and the Executive branches of government with respect to the case at hand.

Executed on this 29th day of December, 2011.

s/ Daniel Kelly

Daniel Kelly

Attorney for Defendants Michael
Brennan, David Deininger, Gerald
Nichol, Thomas Cane, Thomas Barland,
Timothy Vocke, and Kevin Kennedy

REINHART\8176229

From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Thursday, December 22, 2011 6:22 PM
To: Lazar, Maria S.; Daniel Kelly; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Subject: Draft stipulation and order with respect to discovery

Counsel,

I am attaching a copy of the draft stipulation and order that I provided in hard-copy format to counsel present at the deposition today. I have received comments from Maria, as well as Tom's comment that I need to add a signature line for all counsel. Given the five-day rule in the Court's scheduling order, we will need to file the stipulation no later than Tuesday, December 27th. We will need to get everyone's agreement on the stip by then, otherwise, we will need to file an appropriate motion. Please provide me either with your authority to sign your name to this stipulation or your suggested revisions to the attached draft at your earliest convenience. Thank you, and best wishes to all for the holidays.


Doug

Douglas M. Poland
Attorney

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Madison, Wisconsin 53703
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE
BECHEN, RONALD BIENDSEIL, RON BOONE, VERA
BOONE, ELVIRA BUMPUS, EVANJELINA
CLEEREMAN, SHEILA COCHRAN, LESLIE W.
DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-
BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel
for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI,
PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

Intervenor-Defendants.

(caption continued on next page)

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

STIPULATION AND ORDER WITH RESPECT TO DISCOVERY

VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

The parties in this matter, by their undersigned counsel, hereby stipulate and agree to the entry of an order without further proceedings memorializing their limited agreement with respect to discovery and amending, to a limited extent, the corresponding provisions of the Court's "Scheduling and Discovery Order" [Docket No. 35], dated November 14, 2011.

WHEREAS, the parties have exchanged written discovery requests and responded to them, with objections, and the plaintiffs have begun depositions of the defendants' witnesses, beginning with Joseph Handrick on December 20, Adam Foltz on December 21 and Tad Ottman on December 22;

WHEREAS, this Court has entered a series of orders and opinions on issues involving discovery—on November 30, the Court entered an Order denying Plaintiffs' Motion to Compel Disclosure [Docket No. 61]; on December 8, the Court entered an Order denying Non-Parties' Motion to Quash Third-Party Subpoenas issued to Joseph Handrick and Tad Ottman [Docket

No. 74]; and, on December 20, the Court entered an Order granting in part and denying in part, Non-Parties' Motion to Clarify the December 8, 2011 Order [Docket No. 82];

WHEREAS, the defendants and/or the legislature have objected and continue to object to deposition questions posed by plaintiffs' counsel on a variety of grounds and, in that regard, have explicitly directed their witnesses not to answer questions posed by plaintiffs' counsel at deposition;

WHEREAS, the depositions have not been completed;

WHEREAS, the defendants and/or the legislature have withheld from production documents requested in deposition subpoenas served on Joseph Handrick, Adam Foltz, and Tad Ottman, based on the assertion of privilege and in response to plaintiffs' document productions requests;

WHEREAS, the plaintiffs contend that those objections are unwarranted and unsustainable, both in light of the Court's discovery orders and otherwise, leading the plaintiffs to contemplate subsequent motions to enforce the Court's orders;

WHEREAS, the legislature is contemplating appellate remedies, if any, with respect to this Court's discovery orders; and,

WHEREAS, the transcripts of the depositions, which record each of the objections and instructions not to answer, will not be readily available even on an expedited basis in light of the holidays;

NOW, THEREFORE, IT IS HEREBY AGREED that:

1. The plaintiffs need not file any subsequent motions related to discovery until Friday, December 30, 2011;

2. The defendants and/or the legislature shall have until the close of business on Friday, December 30, 2011, to seek and obtain any appellate relief that might be available with respect to the Court's December 20, 2011 order; and,

3. If there is any conflict or inconsistency between this stipulation and the Court's November 14, 2011 Scheduling and Discovery Order, this stipulation, if entered by the Court as an order, shall control.

Dated: December 22, 2011.

GODFREY & KAHN, S.C.

Dated: December ____, 2011.

WISCONSIN ATTORNEY GENERAL

Douglas M. Poland
State Bar No. 1055189
One East Main Street, Suite 500
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Madison, WI 53701-2719
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rmason@gklaw.com

Attorneys for Plaintiffs

Dated: December ____, 2011.

Thomas L. Shriner, Jr.
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777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
414-297-5601
tshriner@foley.com

Attorneys for Intervenor-Defendants

Dated: December ____, 2011.

Peter G. Earle
State Bar No. _____
Law Office of Peter Earle, LLC
839 North Jefferson Street, Suite 300
Milwaukee, WI 53202

Maria Lazar
Assistant Attorney General
State Bar No. _____
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lazarms@doj.state.wi.us

Attorneys for Defendants

Dated: December ____, 2011.

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Attorneys for Intervenor-Plaintiffs

Dated: December ____, 2011.

Eric McLeod
State Bar No. _____
Michael Best & Friedrich LLP
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414-276-1076
peter@earle-law.com

Attorneys for Consolidated Plaintiff

608-283-2257
emmcleod@michaelbest.com

*Attorneys for Wisconsin State Senate
and Assembly*

ORDER

Based on the representations of counsel, signed above, the stipulated provisions affecting scheduling above shall be entered as the order of this Court.

Dated: December ____, 2011.

BY THE COURT:

Hon. J.P. Stadtmueller

7264926..1

From: Daniel Kelly
Sent: Friday, December 23, 2011 11:28 AM
To: Poland, Douglas; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shasset@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Doug,

We have no objection to your request for additional time to file your discovery motions. But we are not willing to stipulate to your argument or characterization of what has occurred. If your goal is an extension, the attached redlined document is perfectly adequate for that purpose. If you feel it is necessary to start your argument through your request for an extension, we must respectfully decline.

You have my authorization to sign my name to the stipulation as I have amended it, but not to the document you circulated yesterday. Please let me know if you have any questions.

Regards,

Daniel Kelly

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700 | Milwaukee, WI 53202
Office: 414-298-8284 | Cell: 414-588-2027 | Fax: 414-298-8097
dkelly@reinhartlaw.com | vCard | reinhartlaw.com

From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Thursday, December 22, 2011 6:22 PM
To: Lazar, Maria S.; Daniel Kelly; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shasset@lawtoncates.com; Peter Earle
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Counsel,

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Doug

Douglas M. Poland
Attorney



GODFREY & KAHN^{sc}

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EASTERN DISTRICT OF WISCONSIN

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CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-
BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel
for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI,
PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

Intervenor-Defendants.

(caption continued on next page)

STIPULATION AND ORDER WITH RESPECT TO DISCOVERY

VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

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NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

The parties in this matter, by their undersigned counsel, hereby stipulate and agree to the
entry of an order without further proceedings memorializing the following ~~their~~ limited
agreement with respect to discovery and amending, to a limited extent, the corresponding
provisions of the Court's "Scheduling and Discovery Order" [Docket No. 35], dated
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~~WHEREAS, the parties have exchanged written discovery requests and responded to
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on December 22;~~

~~WHEREAS, this Court has entered a series of orders and opinions on issues involving
discovery—on November 30, the Court entered an Order denying Plaintiffs' Motion to Compel
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Motion to Quash Third-Party Subpoenas issued to Joseph Handrick and Tad Ottman [Docket~~

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~~WHEREAS~~, the defendants and/or the legislature have objected and continue to object to deposition questions posed by plaintiffs' counsel on a variety of grounds and, in that regard, have explicitly directed their witnesses not to answer questions posed by plaintiffs' counsel at deposition;

~~WHEREAS~~, the depositions have not been completed;

~~WHEREAS~~, the defendants and/or the legislature have withheld from production documents requested in deposition subpoenas served on Joseph Handrick, Adam Holz, and Fad Ottoman, based on the assertion of privilege and in response to plaintiffs' document productions requests;

~~WHEREAS~~, the plaintiffs contend that those objections are unwarranted and unsustainable, both in light of the Court's discovery orders and otherwise, leading the plaintiffs to contemplate subsequent motions to enforce the Court's orders;

~~WHEREAS~~, the legislature is contemplating appellate remedies, if any, with respect to this Court's discovery orders; and,

~~WHEREAS~~, the transcripts of the depositions, which record each of the objections and instructions not to answer, will not be readily available even on an expedited basis in light of the holidays;

~~NOW, THEREFORE, IT IS HEREBY AGREED~~ that:

1. The plaintiffs need not file any subsequent motions related to discovery until Friday, December 30, 2011;

2. The ~~defendants and/or the legislature~~ shall have until the close of business on Friday, December 30, 2011, to seek and obtain any appellate relief that might be available with respect to the Court's December 20, 2011 order; and,

3. If there is any conflict or inconsistency between this stipulation and the Court's November 14, 2011 Scheduling and Discovery Order, this stipulation, if entered by the Court as an order, shall control.

Dated: December 22, 2011.

GODFREY & KAHN, S.C.

Dated: December ____, 2011.

WISCONSIN ATTORNEY GENERAL

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rmason@gklaw.com

Attorneys for Plaintiffs

Dated: December ____, 2011.

Thomas L. Shriner, Jr.
State Bar No. _____
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
414-297-5601
tshriner@foley.com

Attorneys for Intervenor-Defendants

Dated: December ____, 2011.

Peter G. Earle
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Law Office of Peter Earle, LLC
839 North Jefferson Street, Suite 300
Milwaukee, WI 53202

Maria Lazar
Assistant Attorney General
State Bar No. _____
17 West Main Street
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608-267-3519
lazarms@doj.state.wi.us

Attorneys for Defendants

Dated: December ____, 2011.

P. Scott Hassett
State Bar No. _____
Lawton & Cates, S.C.
10 E. Doty Street, Suite 400
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Madison, WI 53701-2965
608-282-6200
shassett@lawtoncates.com
Attorneys for Intervenor-Plaintiffs

Dated: December ____, 2011.

Eric McLeod
State Bar No. _____
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
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414-276-1076
peter@earle-law.com

Attorneys for Consolidated Plaintiff

608-283-2257
emmcleod@michaelbest.com

*Attorneys for Wisconsin State Senate
and Assembly*

ORDER

Based on the representations of counsel, signed above, the stipulated provisions affecting scheduling above shall be entered as the order of this Court.

Dated: December ____, 2011.

BY THE COURT:

Hon. J.P. Stadtmueller

7264926_1

From: Daniel Kelly
Sent: Friday, December 23, 2011 5:52 PM
To: Poland, Douglas; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Doug,

Thank you for the revised draft. However, I note that you did not, as I requested, explain the need for all the extraneous material if what you really want is a simple extension of time within which to file discovery motions.

The tenor of your draft suggests you wish to begin your discovery arguments with the request for an extension. I think that is an unfortunate and unnecessary choice.

However, I want to make sure you can file your request as soon as possible. Thus, I have attached a stipulation with some further edits clarifying that the Court's discovery orders have not addressed the attorney client privilege between the defendants and their counsel, or their counsel's work product.

If everyone accepts these edits, you have my authorization to sign this document on my behalf. If these edits are not acceptable, you may still obtain your extension by submitting the document I circulated this morning at 11:28 a.m. (which I authorize you to sign on my behalf).

Regards,

Daniel Kelly
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700 | Milwaukee, WI 53202
Office: 414-298-8284 | Cell: 414-588-2027 | Fax: 414-298-8097
dkelly@reinhartlaw.com | vCard | reinhartlaw.com

From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Friday, December 23, 2011 3:15 PM
To: Daniel Kelly; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Attached is a revised draft stipulation incorporating Maria's revisions.

Douglas M. Poland
Attorney

GODFREY KAHN^{sc}
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From: Daniel Kelly [mailto:dkelly@reinhartlaw.com]
Sent: Friday, December 23, 2011 12:51 PM
To: Poland, Douglas; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Doug,

Please feel free to circulate a draft incorporating Maria's suggestions and I will look at it. But please also explain why the remainder of the material is necessary when the scheduling order says we can simply stipulate to extensions.

We obviously cannot stipulate to your characterizations or your argument. So if we are to do something other than a simple stipulation for extension, my edits to your proposed language will be more extensive.

Regards,

Daniel Kelly
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700 | Milwaukee, WI 53202
Office: 414-298-8284 | Cell: 414-588-2027 | Fax: 414-298-8097
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From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Friday, December 23, 2011 12:43 PM
To: Daniel Kelly; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Dan,


Maria suggested some additional revisions to the draft that I circulated yesterday, and her additional suggestions were acceptable to us, but her revisions did not eliminate the language that you have stricken. I can circulate a revised version of the stipulation with Maria's revisions, if that would be helpful. We are prepared to accommodate any reasonable further additions or suggestions you have, but we believe that the stipulation should reflect the parties' agreement with respect to the timing of any motion practice relating to the objections that have been asserted, as well as the circumstances giving rise to that agreement. In the absence of agreement on the language of a stipulation, we will file an appropriate motion no later than Tuesday.

Douglas M. Poland
Attorney

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From: Daniel Kelly [mailto:dkelly@reinhartlaw.com]
Sent: Friday, December 23, 2011 11:28 AM
To: Poland, Douglas; Lazar, Maria S.; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Cc: Patrick J. Hodan; Colleen E. Fielkow
Subject: RE: Draft stipulation and order with respect to discovery

Doug,

We have no objection to your request for additional time to file your discovery motions. But we are not willing to stipulate to your argument or characterization of what has occurred. If your goal is an extension, the attached redlined document is perfectly adequate for that purpose. If you feel it is necessary to start your argument through your request for an extension, we must respectfully decline.

You have my authorization to sign my name to the stipulation as I have amended it, but not to the document you circulated yesterday. Please let me know if you have any questions.

Regards,

Daniel Kelly

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700 | Milwaukee, WI 53202
Office: 414-298-8284 | Cell: 414-588-2027 | Fax: 414-298-8097
dkelly@reinhartlaw.com | vCard | reinhartlaw.com

From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Thursday, December 22, 2011 6:22 PM
To: Lazar, Maria S.; Daniel Kelly; Shriner Jr., Thomas L.; McLeod, Eric M (22257); shassett@lawtoncates.com; Peter Earle
Subject: Draft stipulation and order with respect to discovery

Counsel,

I am attaching a copy of the draft stipulation and order that I provided in hard-copy format to counsel present at the deposition today. I have received comments from Maria, as well as Tom's comment that I need to add a signature line for all counsel. Given the five-day rule in the Court's scheduling order, we will need to file the stipulation no later than Tuesday, December 27th. We will need to get everyone's agreement on the stip by then, otherwise, we will need to file an appropriate motion. Please provide me either with your authority to sign your name to this stipulation or your suggested revisions to the attached draft at your earliest convenience. Thank you, and best wishes to all for the holidays.

Doug

Douglas M. Poland
Attorney

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE
BECHEN, RONALD BIENDSEIL, RON BOONE, VERA
BOONE, ELVIRA BUMPUS, EVANJELINA
CLEEREMAN, SHEILA COCHRAN, LESLIE W.
DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-
BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel
for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI,
PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

Intervenor-Defendants.

(caption continued on next page)

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

STIPULATION AND ORDER WITH RESPECT TO DISCOVERY

VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

The parties in this matter, by their undersigned counsel, hereby stipulate and agree to the entry of an order without further proceedings memorializing their limited agreement with respect to discovery and amending, to a limited extent, the corresponding provisions of the Court's "Scheduling and Discovery Order" [Docket No. 35], dated November 14, 2011.

WHEREAS, the parties have exchanged written discovery requests and responded to them, with objections, and the plaintiffs have begun depositions of non-party witnesses, beginning with Joseph Handrick on December 20, Adam Foltz on December 21 and Tad Ottman on December 22;

WHEREAS, this Court has entered a series of orders and opinions on issues involving discovery—on November 30, the Court entered an Order denying Plaintiffs' Motion to Compel Disclosure [Docket No. 61]; on December 8, the Court entered an Order denying Non-Parties' Motion to Quash Third-Party Subpoenas issued to Joseph Handrick and Tad Ottman [Docket

No. 74]; and, on December 20, the Court entered an Order granting in part and denying in part, Non-Parties' Motion to Clarify the December 8, 2011 Order [Docket No. 82];

WHEREAS, the legislature ~~and/or the defendants have~~ has objected and continues to object to deposition questions posed by plaintiffs' counsel on a variety of grounds and, in that regard, have explicitly instructed the deponents not to answer questions posed by plaintiffs' counsel at deposition;

WHEREAS, plaintiffs' counsel asked deposition questions that inquired into the defendant's privileged communications with their counsel, as well as their counsel's work product, and defendants' counsel instructed the witness not to answer such questions;

WHEREAS, the Court's orders have not addressed the attorney-client privilege or the work product doctrine with respect to the members of the Government Accountability Board, or its Director and General Counsel, and their attorneys;

WHEREAS, the depositions have not been completed;

WHEREAS, the legislature has withheld from production documents requested in deposition subpoenas served on Joseph Handrick, Adam Foltz, and Tad Ottman, based on the assertion of privilege and in response to plaintiffs' document productions requests;

WHEREAS, the plaintiffs contend that the legislature's ~~these~~ objections are unwarranted and unsustainable, both in light of the Court's discovery orders and otherwise, leading the plaintiffs to contemplate subsequent motions to enforce the Court's orders;

~~WHEREAS~~, ~~the defendants do not believe any of the Court's orders address the attorney-client privilege or the work product doctrine with respect to the members of the Government Accountability Board, or its Director and General Counsel, with their attorneys;~~

WHEREAS, the legislature is contemplating appellate remedies, if any, with respect to this Court's discovery orders; and,

WHEREAS, the transcripts of the depositions, which record each of the objections and instructions not to answer, will not be readily available even on an expedited basis in light of the holidays;

NOW, THEREFORE, IT IS HEREBY AGREED that:

1. The plaintiffs need not file any subsequent motions related to discovery until Friday, December 30, 2011;

2. The legislature shall have until the close of business on Friday, December 30, 2011, to seek and obtain any appellate relief that might be available with respect to the Court's December 20, 2011 order; and,

3. If there is any conflict or inconsistency between this stipulation and the Court's November 14, 2011 Scheduling and Discovery Order, this stipulation, if entered by the Court as an order, shall control.

Dated: December __, 2011.

GODFREY & KAHN, S.C.

Dated: December ____, 2011.

WISCONSIN ATTORNEY GENERAL

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Dated: December ____, 2011.

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Dated: December ____, 2011.

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Dated: December ____, 2011.

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Dated: December ____, 2011.

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Dated: December ____, 2011.

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*Attorneys for Wisconsin State Senate
and Assembly*

ORDER

Based on the representations of counsel, signed above, the stipulated provisions affecting scheduling above shall be entered as the order of this Court.

Dated: December ____, 2011.

BY THE COURT:

Hon. J.P. Stadtmueller

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